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14 UNITED STATES BANKRUPTCY COURT
15 EASTERN DISTRICT OF WASHINGTON

16 In Re: 17 KENNEWICK PUBLIC HOSPITAL 18 DISTRICT, 19 Debtor. 20	Case No. 17-02025-FPC9 Adv. Proc. No. 17-80042-FPC9
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ANSWER TO AMENDED COMPLAINT,
DEFENSES, AND COUNTERCLAIM – 1
Case No. 17-02025-9, Adv. Proc. No. 17-80042

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1 KENNEWICK PUBLIC HOSPITAL
2 DISTRICT, a Washington public
3 hospital district,

4 Plaintiff,

5 v.
6 THE UNIVERSITY OF PUGET
7 SOUND, a Washington nonprofit
8 corporation,

9 Defendant,

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**THE UNIVERSITY OF PUGET
SOUND'S ANSWER TO
AMENDED COMPLAINT,
DEFENSES, AND
COUNTERCLAIM**

ANSWER

The University of Puget Sound (the “University”) answers the allegations in the Amended Complaint for Declaratory Judgment, Quiet Title, Avoidance of Transfers, Recovery of Avoided Transfers, and Avoidance of Judgment (“Amended Complaint”) as follows:

I. PARTIES

1.1 The University admits the allegations in paragraph 1.1.
1.2 The University admits the allegations in paragraph 1.2.

II. JURISDICTION AND VENUE

2.1 Paragraph 2.1 does not contain allegations requiring a responsive pleading.

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2.2 The University admits that this Court has subject matter jurisdiction to resolve the District's claims as pleaded but denies that the Ayers Property is part of the property of the debtor or subject to this Court's jurisdiction. The allegations in paragraph 2.2 are otherwise denied.

2.3 The University admits the allegations in paragraph 2.3.

III. FACTUAL BACKGROUND

3.1 Paragraph 3.1 does not contain allegations requiring a responsive pleading.

The Ayers Property and Wills

3.2 The University admits the allegations in paragraph 3.2.

3.3 The University admits the allegations in paragraph 3.3.

3.4 The University admits that the Wills devised legal title to the Ayers

13 Property to the District as trustee for the benefit of the University and itself, that
14 the Wills required the District to supervise the Ayers Property without charge,
15 including the preparation of annual accountings of all receipts and disbursements
16 relating to it, and that the Wills required the District to turn over to UPS one-half
17 of all the net proceeds from the Ayers property, together with the annual
18 accounting of receipts and disbursements. The University denies allegations in
19 paragraph 3.4 purporting to summarize or paraphrase the provisions of the Wills

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1 to the extent such allegations are incomplete or inconsistent with the Wills as a
2 whole. The allegations in paragraph 3.4 are otherwise denied.

3 3.5 The University admits the allegations in the first sentence of
4 paragraph 3.5, although the word “trust” was contemporaneously used, e.g., in the
5 deeds effecting the transfer of legal title, to describe what the Wills created. The
6 allegations in paragraph 3.5 are otherwise denied.

7 3.6 The University admits the allegations in paragraph 3.6.

8 3.7 The University admits the allegations in paragraph 3.7.

9 3.8 The University admits the allegations in paragraph 3.8, but the deeds
10 do provide contemporaneous acknowledgement of the trust provisions of the
11 Wills and rights and interests they created and provide notice of those provisions,
12 rights, and interests in the chain of title.

13 **The 2006 Action**

14 3.9 The University admits the allegations in paragraph 3.9.

15 3.10 The University admits that, before and after the 2006 Action, the
16 District held legal title to the Ayers Property as trustee for the benefit of the
17 University and itself. The allegations in paragraph 3.10 are otherwise denied.

18 3.11 The University admits the allegations in paragraph 3.11.

19 3.12 The University admits that the stipulation resulted in a judgment
20 concluding the 2006 Action, which removed the restraints at issue while

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1 expressly preserving all rights and interests of the University under the trust
2 provisions of the Wills. The allegations in paragraph 3.12 are otherwise denied.

3 3.13 The University admits the allegations in paragraph 3.13.

4 3.14 The University admits that the 2009 Judgment did not itself create a
5 trust, but it did expressly preserve all rights and interests of the University under
6 the trust provisions of the Wills. The allegations in paragraph 3.14 are otherwise
7 denied.

8 3.15 The University denies the allegations in paragraph 3.15.

9 **The District's Water Rights**

10 3.16 The University admits the allegations in paragraph 3.16, and that the
11 District sought the University's assistance and cooperation in these proceedings.

12 3.17 The University admits the allegations in paragraph 3.17.

13 **Sales of Parcels of the Ayers Property**

14 3.18 The University admits the allegations in paragraph 3.18.

15 3.19 The University admits that the District entered into a Purchase
16 Agreement with Easterday, that the sale to Easterday included the sale of water
17 rights directly related to, derived from, and dependent upon the Ayers Property
18 held in trust, and that the Purchase Agreement purported to allocate \$6,000,000 of
19 the purchase price to such water rights and \$1,377,000 of the purchase price to

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1 the land assuming no water rights. The allegations in paragraph 3.19 are
2 otherwise denied.

3 3.20 The University denies the allegations in paragraph 3.20.

4 3.21 The University denies the allegations in paragraph 3.21.

5 3.22 The University admits the allegations in paragraph 3.22.

6 3.23 The University denies the allegations in paragraph 3.23.

7 3.24 The University admits that the District did not distribute any
8 proceeds from the 2014 Sales until the University compelled it to do so, and that
9 the District concealed the sale from the University. The allegations in paragraph
10 3.24 are otherwise denied.

11 **The 2016 Settlement Agreement**

12 3.25 The University admits the allegations in paragraph 3.25.

13 3.26 The University denies the allegations in paragraph 3.26 purporting to
14 summarize or paraphrase the provisions of the 2016 Settlement Agreement to the
15 extent such allegations are incomplete or inconsistent with the 2016 Settlement
16 Agreement as a whole. The University admits that, pursuant to the Agreement,
17 the District remitted to the University some of the trust proceeds it had
18 wrongfully withheld. The allegations in paragraph 3.26 are
19 otherwise denied.

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1 3.27 The University denies the allegations in paragraph 3.27 purporting to
2 summarize or paraphrase the provisions of the 2016 Settlement Agreement to the
3 extent such allegations are incomplete or inconsistent with the 2016 Settlement
4 Agreement as a whole. The University admits that the 2016 Settlement
5 Agreement required the District to remit an initial payment that was more than
6 \$1,000,000 and that the District made the initial payment. The allegations in
7 paragraph 3.27 are otherwise denied.

8 3.28 The University denies allegations in paragraph 3.28 purporting to
9 summarize or paraphrase the provisions of the 2016 Settlement Agreement to the
10 extent such allegations are incomplete or inconsistent with the 2016 Settlement
11 Agreement as a whole. The University admits that the 2016 Settlement
12 Agreement required the District to make a promissory note for \$2,200,000
13 payable over 30 months with 6.5% interest per annum. The University further
14 admits that the 2016 Settlement Agreement required the District to sell the
15 remaining Ayers Property and pay all proceeds to the University and that such
16 proceeds would be applied, in part, to the payment obligations under the
17 promissory note. The 2016 Settlement Agreement also required the District to
18 pay to the University one-half of any other income or proceeds of whatever type
19 derived from or related in any manner to the Ayers Property. The allegations in
20 paragraph 3.28 are otherwise denied.

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1 3.29 The University denies the allegations in paragraph 3.29.

2 3.30 The University admits the allegations in paragraph 3.30.

3 3.31 The University denies the allegations in paragraph 3.31.

4 **The 2017 Amendment**

5 3.32 The University admits the allegations in paragraph 3.32.

6 3.33 The University admits the allegations in paragraph 3.33.

7 3.34 The University denies allegations in paragraph 3.34 purporting to
8 summarize or paraphrase the provisions of the 2017 Amendment to the extent
9 such allegations are incomplete or inconsistent with the 2017 Amendment as a

10 whole. The University admits that the 2017 Amendment, among other things,

11 allowed the University the option to receive transfer of the Remaining Ayers

12 Property in fulfillment (in whole or in part) of the District's obligations as trustee

13 under the trust provisions of the Ayers' Wills and the 2016 Settlement Agreement

14 and that such transfer would enable the University to prepare, market, and sell the

15 Remaining Ayers Property and apply the proceeds consistent with the parties'

16 rights and obligations. The allegations in paragraph 3.34 are otherwise denied.

17 3.35 The University denies allegations in paragraph 3.35 purporting to
18 summarize or paraphrase the provisions of the 2017 Amendment to the extent
19 such allegations are incomplete or inconsistent with the 2017 Amendment as a

20 whole. The University admits that the 2017 Amendment, among other things,

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1 allowed the University the option to receive transfer of the Remaining Ayers
2 Property and that such transfer would enable the University to prepare, market,
3 and sell the Remaining Ayers Property and apply the proceeds consistent with the
4 parties' rights and obligations. The allegations in paragraph 3.35 are otherwise
5 denied.

6 3.36 The University admits that the 2017 Amendment set forth a process
7 for calculating and satisfying the University's interests as a beneficiary under the
8 trust provisions of the Ayers' Wills, under the 2016 Settlement Agreement, and in
9 reimbursement or credit of costs incurred or to be incurred in connection with the
10 subsequent sale of the Remaining Ayers Property. The University denies the
11 allegations in paragraph 3.36 purporting to summarize or paraphrase the
12 provisions of the 2017 Amendment to the extent such allegations are incomplete
13 or inconsistent with the 2017 Amendment as a whole. The allegations in
14 paragraph 3.36 are otherwise denied.

15 3.37 The University denies the allegations in paragraph 3.37 purporting to
16 summarize or paraphrase the provisions of the 2017 Amendment to the extent
17 such allegations are incomplete or inconsistent with the 2017 Amendment as a
18 whole. The University admits that the 2017 Amendment requires the University
19 to pay to the District any "Excess Transfer Value," as defined in the 2017
20 Amendment, and entitles the University to a judgment for any "Transfer Value

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1 Deficiency,” as defined in the 2017 Amendment. The allegations in paragraph
2 3.37 are otherwise denied.

3 3.38 The University denies the allegations in paragraph 3.38.

4 3.39 The University denies the allegations in paragraph 3.39.

5 **The Escrow Transaction**

6 3.40 The University denies the allegations in paragraph 3.40 purporting to
7 summarize or paraphrase the provisions of the 2017 Amendment to the extent
8 such allegations are incomplete or inconsistent with the 2017 Amendment as a
9 whole. The University otherwise admits the allegations in paragraph 3.40.

10 3.41 The University admits that the District carried out various
11 obligations required of it under the 2017 Amendment, including passing a
12 resolution approving the 2017 Amendment and authorizing the transfer. The
13 allegations in paragraph 3.41 are otherwise denied.

14 3.42 The University admits the allegations in paragraph 3.42.

15 3.43 The University admits that the Executed Transfer Documents were
16 deposited in escrow and that the Deed has not yet been recorded in Benton
17 County, where the Remaining Ayers Property is situated. The allegations in
18 paragraph 3.43 are otherwise denied.

19 **The District’s Bankruptcy and Postpetition Developments**

20 3.44 The University admits the allegations in paragraph 3.44.

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3.45 The University admits the allegations in paragraph 3.45.

3.46 The University admits the allegations in paragraph 3.46.

IV. FIRST CLAIM FOR RELIEF

DECLARATORY JUDGMENT

4.1 The allegations in paragraph 4.1 do not require a responsive pleading.

4.2 The University denies the allegations in paragraph 4.2.

4.3 The University denies the allegations in paragraph 4.3.

4.4 The University denies the allegations in paragraph 4.4.

4.5 The University denies the allegations in paragraph 4.5.

4.6 The University admits that closing on the transfer of the Remaining Ayers Property has not yet occurred and that legal title to the property therefore has not yet transferred. The allegations in paragraph 4.6 are otherwise denied.

4.7 The University denies the allegations in paragraph 4.7.

4.8 The University denies that the District is entitled to the declaratory judgment described in paragraph 4.8.

V. SECOND CLAIM FOR RELIEF

QUIET TITLE

5.1 The allegations in paragraph 5.1 do not require a responsive pleading.

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1 5.2 The University denies the allegations in paragraph 5.2.
2 5.3 The University denies the allegations in paragraph 5.3.
3 5.4 The University denies the allegations in paragraph 5.4.
4 5.5 The University denies the allegations in paragraph 5.5.
5 5.6 The University admits that closing on the transfer of the Remaining
6 Ayers Property has not yet occurred and that legal title to the property therefore
7 has not yet transferred. The allegations in paragraph 5.6 are otherwise denied.

8 5.7 The University denies the allegations in paragraph 5.7.
9 5.8 The University denies that the District is entitled to the judgment
10 quieting title described in paragraph 5.8.

11 **VI. THIRD CLAIM FOR RELIEF**

12 **AVOIDANCE AND RECOVERY OF ALLEGED UPS INTEREST IN REMAINING AYERS 13 PROPERTY PURSUANT TO 11 U.S.C. §§ 544(A)(3), 550, AND 551 (IN THE 14 ALTERNATIVE TO COUNTS I AND II)**

15 6.1 The allegations in paragraph 6.1 do not require a responsive
16 pleading.
17 6.2 The University denies the allegations in paragraph 6.2.
18 6.3 The University denies the allegations in paragraph 6.3.
19 6.4 The University denies the allegations in paragraph 6.4.
20 6.5 The University denies the allegations in paragraph 6.5.

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6.6 The University denies that the District is entitled to the avoidance, recovery, and preservation described in paragraph 6.6.

VII. FOURTH CLAIM FOR RELIEF

**AVOIDANCE AND RECOVERY OF ESCROW TRANSACTION PURSUANT TO 11
U.S.C. §§ 544(a)(3), 550, AND 551**

7.1 The allegations in paragraph 7.1 do not require a responsive pleading.

7.2 The University denies the allegations in paragraph 7.2.

7.3 The University admits that the Deed and Executed Transfer Documents were not recorded. The allegations in paragraph 7.3 are otherwise denied.

7.4 The University denies the allegations in paragraph 7.4.

7.5 The University denies that the District is entitled to the avoidance, recovery, and preservation described in paragraph 7.5.

VIII. FIFTH CLAIM FOR RELIEF

AVOIDANCE AND RECOVERY OF SETTLEMENT PAYMENTS AS CONSTRUCTIVELY FRAUDULENT TRANSFERS PURSUANT TO 11 U.S.C. §§ 548(a)(1)(B), 550, AND 551

8.1 The allegations in paragraph 8.1 do not require a responsive pleading.

8.2 The University denies the allegations in paragraph 8.2.

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1 8.3 The University denies the allegations in paragraph 8.3.

2 8.4 The University denies that (a) characterization of the water rights as
3 real or personal property and (b) whether such rights “attached,” are, or ever
4 were, relevant to the parties’ rights as co-beneficiaries, or to the District’s
5 obligations as trustee, with respect to such water rights or the proceeds derived
6 from them. The allegations in paragraph 8.4 are otherwise denied.

7 8.5 The University denies the allegations in paragraph 8.5.

8 8.6 The University denies the allegations in paragraph 8.6.

9 8.7 The University denies the allegations in paragraph 8.7.

10 8.8 The University denies the allegations in paragraph 8.8.

11 8.9 The University denies the allegations in paragraph 8.9.

12 8.10 On information and belief, the University denies the allegations in
13 paragraph 8.10.

14 8.11 On information and belief, the University denies the allegations in
15 paragraph 8.11.

16 8.12 The University denies that the District is entitled to the avoidance,
17 recovery, and preservation described in paragraph 8.12.

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IX. SIXTH CLAIM FOR RELIEF

**AVOIDANCE AND RECOVERY OF ESCROW TRANSACTION AS CONSTRUCTIVELY
FRAUDULENT TRANSFERS PURSUANT TO 11 U.S.C. §§ 548(a)(1)(B), 550, AND
551**

9.1 The allegations in paragraph 9.1 do not require a responsive pleading.

9.2 The University admits the allegations in paragraph 9.2.

9.3 The University denies the allegations in paragraph 9.3.

9.4 The University lacks knowledge sufficient to answer the allegations

in paragraph 9.4, and therefore denies the same.

9.5 The University denies the allegations in paragraph 9.5.

9.6 The University lacks knowledge sufficient to answer the allegations in paragraph 9.6, and therefore denies the same.

9.7 The University denies that the District is entitled to the avoidance, recovery, and preservation described in paragraph 9.7.

X SEVENTH CLAIM FOR RELIEF

AVOIDANCE AND RECOVERY OF SETTLEMENT PAYMENTS AS CONSTRUCTIVELY FRAUDULENT TRANSFERS PURSUANT TO 11 U.S.C. §§ 544(B), 550, AND 551, AND RCW 19.40.041(1)(B) AND 19.40.051(1)

10.1 The allegations in paragraph 10.1 do not require a responsive pleading.

10.2 The University denies the allegations in paragraph 10.2.

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10.3 The University denies the allegations in paragraph 10.3.

10.4 The University denies that (a) characterization of the water rights as real or personal property and (b) whether such rights “attached,” are, or ever were, relevant to the parties’ rights as co-beneficiaries, or to the District’s obligations as trustee, with respect to such water rights or the proceeds derived from them. The allegations in paragraph 10.4 are otherwise denied.

10.5 The University denies the allegations in paragraph 10.5.

10.6 The University denies the allegations in paragraph 10.6.

10.7 The University denies the allegations in paragraph 10.7.

10.8 The University denies the allegations in paragraph 10.8.

10.9 The University denies the allegations in paragraph 10.9.

10.10 On information and belief, the University denies the allegations in paragraph 10.10.

10.11 On information and belief, the University denies the allegations in paragraph 10.11.

10.12 The University denies that the District is entitled to the avoidance, recovery, and preservation described in paragraph 10.12.

XI. EIGHTH CLAIM FOR RELIEF

AVOIDANCE AND RECOVERY OF ESCROW TRANSACTION AS CONSTRUCTIVELY FRAUDULENT TRANSFER PURSUANT TO 11 U.S.C. §§ 544(B), 550, AND 551, AND RCW 19.40.041(1)(B) AND 19.40.051(1)

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11.1 The allegations in paragraph 11.1 do not require a responsive pleading.

11.2 The University admits the allegations in paragraph 11.2.

11.3 The University denies the allegations in paragraph 11.3.

11.4 The University lacks knowledge sufficient to answer the allegations in paragraph 11.4 and therefore denies the same.

11.5 The University denies the allegations in paragraph 11.5.

11.6 The University lacks knowledge sufficient to answer the allegations in paragraph 11.6 and therefore denies the same.

11.7 The University denies that the District is entitled to the avoidance, recovery, and preservation described in paragraph 11.7.

XII. NINTH CLAIM FOR RELIEF

AVOIDANCE AND RECOVERY OF CERTAIN SETTLEMENT PAYMENTS AS PREFERENCES PURSUANT TO 11 U.S.C. §§ 547, 550, AND 551

12.1 The allegations in paragraph 12.1 do not require a responsive pleading.

12.2 The University lacks knowledge sufficient to answer the allegations in paragraph 12.2 and therefore denies the same.

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12.3 The University admits that one Settlement Payment was made within 90 days of the Petition Date. The allegations in paragraph 12.3 are otherwise denied.

12.4 The University denies the allegations in paragraph 12.4.

12.5 The University denies the allegations in paragraph 12.5.

12.6 The University admits that the Settlement Payments were made pursuant to the 2016 Settlement Agreement, under which the District agreed to remit to the University trust proceeds belonging to the University as beneficiary. The allegations in paragraph 12.6 are otherwise denied.

12.7 The University denies the allegations in paragraph 12.7.

12.8 The University denies the allegations in paragraph 12.8.

12.9 The University denies the allegations in paragraph 12.9.

12.10 The University denies that the District is entitled to the avoidance, recovery, and preservation described in paragraph 12.10.

XIII. TENTH CLAIM FOR RELIEF

AVOIDANCE AND RECOVERY OF ESCROW TRANSACTION AS PREFERENCE PURSUANT TO 11 U.S.C. §§ 547, 550, AND 551

13.1 The allegations in paragraph 13.1 do not require a responsive pleading.

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13.2 The University lacks knowledge sufficient to answer the allegations in paragraph 13.2 and therefore denies the same.

13.3 The University admits the allegations in paragraph 13.3.

13.4 The University denies the allegations in paragraph 13.4.

13.5 The University denies the allegations in paragraph 13.5.

13.6 The University denies the allegations in paragraph 13.6 are otherwise denied.

13.7 The University denies the allegations in paragraph 13.7.

13.8 The University denies the allegations in paragraph 13.8.

13.9 The University denies the allegations in paragraph 13.9.

13.10 The University denies that the District is entitled to the avoidance, recovery, and preservation described in paragraph 13.10.

XIV. ELEVENTH CLAIM FOR RELIEF

AVOIDANCE OF JUDICIAL LIENS PURSUANT TO 11 U.S.C. § 544(a)(1)

14.1 The allegations in paragraph 14.1 do not require a responsive pleading.

14.2 The University admits the allegations in paragraph 14.2.

14.3 The University denies the allegations in paragraph 14.3.

14.4 The University denies the allegations in paragraph 14.4.

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XV. PRAYER FOR RELIEF

Paragraphs 1–16 of the Prayer for Relief do not require a responsive pleading, but the University denies that the District is entitled to the relief sought.

DEFENSES

The University asserts the following additional defenses to the claims in the Amended Complaint.

1. The District received reasonably equivalent value under the 2016 Settlement Agreement and the 2017 Amendment.

2. The District's claims are barred by the doctrines of waiver, laches, and estoppel.

3. The District's claims are barred by its prior settlement and release of its claims

4. The District is precluded from receiving equitable relief under the doctrine of unclean hands

COUNTERCLAIM

The University incorporates (a) the factual allegations in the above Answer and (b) the facts alleged in the Amended Complaint to the extent such facts are admitted in the above Answer and further alleges as follows:

5. The Wills of J. R. Ayers and Alice H. Ayers placed the Ayers Property in trust. The District is trustee of the trust, and the University and the

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1 District are its beneficiaries. All net proceeds from the Ayers Property—however
2 derived and in whatever form—also are to be held in trust and paid in equal
3 shares to the University and the District.

4 6. The University and the District expressly acknowledged and honored
5 the trust created by the Ayers' Wills by their words and conduct from the time the
6 trust was created until the District embarked upon the scheme to retain all
7 proceeds from the Easterday and Bauder sales in 2014 without notifying the
8 University.

9 7. The District had a fiduciary duty to manage the Ayers Property and
10 proceeds in the interest of the University, including but not limited to a duty not
11 to: (a) use trust property for its own gain or to further its own interests, (b) obtain
12 rights or interests for itself that it was obligated to obtain for the trust, or (c)
13 otherwise compete with the trust for an opportunity.

14 8. The District and the University each understood and acknowledged
15 that the District was seeking to develop water rights with regard to the Ayers
16 Property on behalf of itself and the University as beneficiaries of the trust. Based
17 upon this mutual understanding and acknowledgement, the District charged
18 against the trust proceeds amounts it spent in the efforts to obtain the water rights,
19 without objection by the University, and the University assisted in obtaining the
20 water rights, at the District's request. The University's assistance included

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1 stipulating to the judgment quieting title in 2006, thus allowing for the eventual
2 sale of the Ayers Property.

3 9. The District also represented to third parties, including the State of
4 Washington, that the District was seeking to develop water rights with regard to
5 the Ayers Property on behalf of itself and the University as beneficiaries of the
6 trust land.

7 10. The District's retention of proceeds from the Ayers Property,
8 including those purportedly attributed to the water rights sold to Easterday, both
9 resulted in a charge against the Remaining Ayers Property for such amount and
10 created an obligation to remit to the University its share of the proceeds not
11 distributed to it. The 2016 Settlement Agreement recognized this and set forth
12 the manner in which the District would honor its obligations as trustee with
13 regard to both the proceeds wrongfully retained and the sale of and distribution of
14 proceeds from the Remaining Ayers Property.

15 11. Among other things, the 2016 Settlement Agreement provided that
16 the District, as legal title-holder, would sell the remaining Ayers Property and that
17 all of the proceeds from the sale would be paid directly to the University. If the
18 net proceeds were more than the amount of the University's interests as
19 beneficiary, the surplus would be shared equally by the University and the
20 District.

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1 12. After the 2016 Settlement Agreement, the Remaining Ayers Property
2 continued to be held by the District in trust as it always had been.

3 13. The 2017 Amendment enabled the sale of the Remaining Ayers
4 Property held in trust and the distribution of the proceeds from the sale so as to
5 fulfill the trust obligations to the University and the intent of the Ayers. Thus, the
6 2017 Amendment allowed the District to shift to the University the burden and
7 expense of marketing and selling the remaining Ayers Property and set forth how
8 those costs would be allocated.

9 14. Alternatively, the 2017 Amendment allowed the University to take
10 title to the remaining Ayers Property so as to satisfy the trust obligations to the
11 University as beneficiary. If the value of the property was insufficient to satisfy
12 such obligations, the 2017 Amendment provided that the University would have
13 only a money judgment for the deficiency. If one-half of the value of the
14 remaining Ayers Property exceeded the trust obligations to the University as
15 beneficiary, the Amendment required the University to remit the excess to the
16 District.

17 15. The 2017 Amendment thus provided a means to carry out the trust
18 obligations created by the Ayers' Wills, and the Ayers' directions, under the
19 circumstances.

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16. After the 2017 Amendment, the Remaining Ayers Property continued to be held by the District in trust as it always had been.

17. The fair value of the Remaining Ayers Property as of July 2017 was \$3,641,282, which was less than the amount of the University's interest in that property as beneficiary in light of the District's retention of proceeds received from the Easterday and Bauder sales. Accordingly, the University holds the entire beneficial interest in the Remaining Ayers Property.

Declaratory Judgment

18. A controversy exists as to the parties' respective rights, interests, and obligations under the Ayers' Wills, the 1971 and 1973 Quit Claim Deeds, the 2016 Settlement Agreement, and/or the 2017 Amendment.

19. Based on the allegations in the Amended Complaint, the above Answer, and this Counterclaim, the University is entitled to declaratory judgment that:

19.1 The Remaining Ayers Property is held by the District in trust and therefore is not part of the property of the debtor for purposes of the Bankruptcy Code:

19.2 All proceeds derived from, by, or as a result of the Remaining Ayers Property—whether by sale, rent, or otherwise—are to

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be held by the District in trust and therefore are not part of the property of the debtor for purposes of the Bankruptcy Code;

19.3 The University, as trust beneficiary, holds the entire beneficial interest in the Remaining Ayers Property and is entitled to all proceeds derived from, by, or as a result of the Remaining Ayers Property; and

19.4 Closing on the transfer under the 2017 Amendment may proceed forthwith.

Prayer for Relief

10 Based on the foregoing Answer, Defenses, and Counterclaim, the
11 University seeks entry of judgment:

- A. Denying the relief sought in the Complaint;
- B. Granting the declaratory relief sought in the Counterclaim;
- C. Awarding the University its reasonable costs and attorneys' fees under the 2016 Settlement Agreement; and
- D. Awarding such other relief, at law or in equity, as warranted by the facts as proved at trial or otherwise, including but not limited to imposition of a constructive trust or equitable lien on the Remaining Ayers Property and/or its proceeds.

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DATED: April 5, 2018.

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SAVITT BRUCE & WILLEY LLP

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By: *s/ James P. Savitt*

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 5, 2018 I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel of record.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated this 5th day of April, 2018 at Seattle, Washington.

Nikki Kunz
Nikki Kunz

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